

never brought up by Kanter or by the Court in briefing or at argument and therefore petitioners were never given any notice or opportunity to be heard with respect to waiver⁴, and (4) the newly created rule of waiver was applied retroactively contrary to the practice of the Pennsylvania courts to apply a rule of waiver prospectively only. *See, e.g., Commonwealth v. Lord*, 553 Pa. 415, 420, 719 A.2d 306, 309 (1998) (rule that issues not raised in a Rule 1925(b) statement are waived will be applied prospectively only); *Commonwealth v. Pressley*, ___ A.2d ___, 2005 WL 3203051 (Pa. Supreme Court Nov. 9, 2005) (rule that a party waives claims of error based on failure to give a jury instruction submitted by the party, but rejected by the trial court, and as to which no exception is taken after the jury is charged, will be applied prospectively only).

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari, or in the alternative, pursuant to Supreme Court Rule 16.1, a summary disposition of the merits of this matter should be granted.

Respectfully submitted,

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⁴ Kanter asserts that petitioners "should have known at the time they drafted their 1925(b) statements that they would be subjecting themselves to waiver." Brief in Opposition at 14. Such knowledge would border on precognition as neither Kanter nor the Superior Court ever suggested waiver prior to the Superior Court Opinion and Pennsylvania cases have rejected any finding of waiver in the circumstances. *See* cases cited in the Petition for Certiorari at 18 n.5.